

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANTONIO C. MOORE,)	
)	
Petitioner,)	
)	
v.)	
)	
)	No. 05-3375-CM
)	No. 03-20003-04-CM
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

ORDER

Plaintiff has filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. In response, the government filed a motion to enforce the plea agreement. Before the court turns to those motions, however, the court will address four other motions pending in this case.

First, in his Motion for Extension (Doc. 401), *pro se* petitioner asks the court for an extension of time. Petitioner does not specify why he is requesting the extension, but, based on the timing of petitioner's motion for extension of time, it appears to the court that petitioner seeks extra time to file his § 2255 motion. To the extent that this was petitioner's request, the motion is moot because petitioner filed his § 2255 in a timely manner. To the extent that petitioner was seeking additional time to file an appeal, his request is duplicative of his § 2255 claim that his counsel failed to file an appeal. When the court considers petitioner's § 2255 motion, the court will determine whether petitioner's former counsel ineffectively failed to file an appeal. If the court finds that petitioner's former counsel was ineffective in failing to file an appeal, then petitioner will have another opportunity to file an appeal. This motion is denied as moot and/or

duplicative.

Second, in his Motion for Extension of Time to File Memorandum and Supporting Facts to the Motion Filed Pursuant to § 2255 (Doc. 403), petitioner sought until October 13, 2005 to file an additional document in support of his § 2255 motion. Petitioner never filed the additional document, although he eventually filed a response to the government's motion to enforce the plea agreement. The court is unable to tell whether petitioner elected not to file a memorandum in support of his § 2255 motion, or whether he was waiting on action from the court. In an effort to give petitioner a full opportunity to brief his position, the court grants petitioner until August 14, 2006 to file an additional memorandum in support of his § 2255 motion.

Third, in his Motion for an Order Compelling Petitioner's Previously Court Appointed Attorney to Furnish Information on Case, Transcripts, or the Court Furnish Such Information to Petitioner (Doc. 404), petitioner claims that his former attorney has never provided him with documents from his case, such as the plea agreement and plea hearing transcript. It appears that the government has since provided petitioner with nearly all of the information that he requests, or at least all of the information that is relevant to the remaining motion the court will take up first – the government's motion to enforce the plea agreement. *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (providing that, where a petitioner has waived his appellate rights, the government should file a motion to enforce the plea agreement, which the court will consider before turning to the merits of the appeal). In any event, however, the court finds that petitioner's former counsel, Brian Leininger, should either comply with petitioner's request and certify to the court that he has done so, or notify the court why he cannot comply with petitioner's request. Counsel should do so on or before July 26, 2006.

And fourth, in his Motion for Extension of Time and for an Order Compelling the Government to Provide Sentencing Transcripts to Petitioner (Doc. 411), petitioner asks the court to extend his time to respond to the government's motion to enforce the plea agreement and asks the court to order the government to provide petitioner with a transcript from the sentencing hearing. Petitioner claims that he will be able to show that his plea was involuntary from the sentencing transcript. The first portion of petitioner's motion is moot; petitioner filed a reply to the government's motion to enforce the plea agreement on December 1, 2005. The court will consider petitioner's reply as a timely response to the government's motion. With respect to petitioner's request for a sentencing transcript, the court finds that the transcript is not necessary at this stage of the proceedings. As noted above, the court will first take up the government's motion to enforce the plea agreement, where the court will consider whether petitioner's plea was knowing and voluntary. The court fails to see how events at sentencing are relevant to petitioner's state of mind when he entered his plea of guilty. If the court determines that the plea agreement waiver is unenforceable, the court may then order the government to provide petitioner with a transcript of the sentencing hearing upon request by petitioner. Petitioner's motion is denied without prejudice.

IT IS THEREFORE ORDERED that the Motion for Extension (Doc. 401) is denied.

IT IS FURTHER ORDERED that the Motion for Extension of Time to File Memorandum and Supporting Facts to the Motion Filed Pursuant to § 2255 (Doc. 403) is granted.

IT IS FURTHER ORDERED that the Motion for an Order Compelling Petitioner's Previously Court Appointed Attorney to Furnish Information on Case, Transcripts, or the Court Furnish Such Information to Petitioner (Doc. 404) is granted.

IT IS FURTHER ORDERED that the Motion for Extension of Time and for an Order

Compelling the Government to Provide Sentencing Transcripts to Petitioner (Doc. 411) is denied.

Dated this 21st day of July 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge